

PRIVATE ATTORNEY GENERAL ACT SETTLEMENT AGREEMENT AND RELEASE

This Private Attorney General Act Settlement Agreement and Release ("Settlement Agreement") is entered into by and between Graham Archer ("Archer"), for himself and as a representative of the State of California and the Aggrieved Employees (as defined in Section 3(a)(5) below), on the one hand, and, on the other, Defendant OneLegacy, subject to approval by the Court. The term "Party" or "Parties" as used herein shall refer to Archer, OneLegacy or both, as may be appropriate.

1. **Recitals.** This Settlement Agreement is made with reference to the following facts:

(a) Archer is a former employee of OneLegacy. Archer was employed by OneLegacy from approximately March 2019 to November of 2020;

(b) On November 11, 2020, Archer's counsel, Buchsbaum Haag, LLP, submitted a letter under Labor Code section 2699.3 (the "PAGA Notice") to the California Labor and Workforce Development Agency ("LWDA") on behalf of Archer and all employees who worked for OneLegacy in California during the statutory period (the "Aggrieved Employees"), to notify the LWDA pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Labor Code section 2698, *et seq.* of Archer's intent to seek civil penalties under PAGA and all other remedies available under PAGA, including but not limited to under Labor Code section 558, for OneLegacy's alleged violations of Labor Code sections 201, 202, 203, 204, 221, 226, 226.3, 510, 512, 515, 1174, 1194, and the applicable Industrial Welfare Commission Wage Orders in conformity with Labor Code section 2699.3. Archer alleges that the "vehicle expense" provided by OneLegacy should have been factored into the Aggrieved Employee's regular rate of pay, that OneLegacy had a policy of requiring non-exempt employees to insert false meal periods in their time records and Aggrieved Employees were therefore not paid all overtime and minimum wages, that OneLegacy failed to provide the Aggrieved Employees the opportunity to take meal and rest periods, and that the paystubs issued by OneLegacy did not indicate the correct overtime rates or correct hours worked (collectively the "PAGA Claim"). "Aggrieved Employees" are defined solely for purposes of this Settlement as former and current Referral Clinical Coordinators (formerly Referral Consult Coordinators), Referral Triage Specialists, Clinical Resource Specialists, and Family Care Specialists employed by OneLegacy in California at any time between November 11, 2019 through the date of entry of judgment for the purposes of the "vehicle expense" claim and all non-exempt employees employed by OneLegacy in California at any time between November 11, 2019 through the date of entry of judgment for the remainder of the claims;

(c) On February 18, 2021, the Parties mediated both the PAGA claim and Archer's alleged claims during a full-day mediation with Kim Deck of Judicate West. Prior to the mediation, the parties exchanged payroll records and wage and hour policies. The PAGA Claim resolved at mediation;

(d) Prior to mediation, Archer had intended to file a complaint seeking various alleged damages on his own behalf, as well as for civil penalties on behalf of himself, others and the State of California pursuant to the Private Attorneys General Act of 2004 ("PAGA"), California Labor Code §2698, *et seq.*, but the underlying claims have now been resolved. Archer's non-PAGA claims have been settled, and are the subject of a separate, confidential settlement

agreement. Nevertheless, Archer will file an action as more specifically described herein exclusively for declaratory relief, for the sole purpose of seeking court approval of the PAGA settlement herein, pursuant to Cal. Labor Code section 2699(l).

(e) There has been no determination on the merits of the PAGA Claim and the various claims asserted, including, but not limited to, in the PAGA Notice but, in order to avoid additional cost and the uncertainty of litigation, the Parties desire to resolve the Released Claims (as defined in Section 7(a) below) as of the date of execution of this Settlement Agreement.

2. **No Admission of Wrongdoing.** The Parties agree that neither this Settlement Agreement nor the furnishing of the consideration for this Settlement Agreement shall be deemed or construed at any time for any purpose as an admission by the Released Parties of wrongdoing or evidence of any liability or unlawful conduct of any kind.

3. **Consideration.**

(a) In consideration for Archer signing this Settlement Agreement and complying with its terms, OneLegacy shall pay, and only ever pay, the maximum gross sum of SEVENTY FIVE THOUSAND DOLLARS AND ZERO CENTS (\$75,000.00) (the "Total Settlement Amount") to resolve the PAGA Claim and Released Claims, which will be paid as follows:

(1) Attorneys' fees of 33.33% of the Total Settlement Amount which sum is TWENTY FIVE THOUSAND DOLLARS AND ZERO CENTS (\$25,000.00) and reimbursement of litigation costs and expenses of FIVE THOUSAND DOLLARS AND ZERO CENTS (\$5,000.00) (collectively, "Attorneys' Fees and Costs") to Archer's Counsel. Any fees and costs not awarded by the Court would be relegated to the PAGA settlement fund for distribution to the LWDA and the allegedly Aggrieved Employees.

(2) An enhancement fee of FIVE DOLLARS AND ZERO CENTS (\$5,000.00) ("Enhancement Fee") to Archer.

(3) Costs and expenses of administration of the Settlement to the LWDA and the PAGA group, not to exceed the amount of THREE THOUSAND TWO HUNDRED NINETY-FIVE DOLLARS AND ZERO CENTS (\$3,295.00) ("Settlement Administration Costs") to Phoenix Settlement Administrators (the "PAGA Settlement Administrator").

(4) The amounts stated in Paragraphs 3(a)(1) – (3) above, once approved by the Court, shall be paid exclusively from the Total Settlement Amount. The balance remaining after these deductions is hereinafter referred to as the "Net Settlement Amount."

(5) Seventy-five percent (75%) of the Net Settlement Amount shall be distributed to the LWDA ("LWDA Payment"); and the remaining twenty-five percent (25%) shall be distributed to the Aggrieved Employees. The 25% portion of the Net Settlement Amount payable to Aggrieved Employees is referred to as the "Employees' Portion."

(b) Because this is a settlement of a PAGA claim for civil penalties only, no portion of the Settlement is allocated to unpaid wages. One Hundred Percent (100%) of the payments for Attorneys' Fees and Costs, Enhancement Fee, and the Net Settlement Amount to be paid to the LWDA and Aggrieved Employees as described in Section 3(a) above will be treated and

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reported for tax purposes as non-wage payments and the Settlement Administrator will be responsible for issuing IRS Forms 1099 as required.

4. **Court Approval is Required.** Archer understands and agrees that the State of California and Aggrieved Employees, including Archer, would not receive the consideration specified in Section 3(a) above, except for Archer's execution of this Settlement Agreement, and the fulfillment of the promises contained herein, including, but not limited to, obtaining Court approval of the Settlement as called for herein.

5. **Approval and Implementation of the PAGA Settlement, Disbursement, and Dismissal of Action.**

(a) Pursuant to this Agreement, Archer shall file an action in the Los Angeles County Superior Court alleging one, and only one, cause of action, which shall be for declaratory relief (the "Action"). The Action shall summarize the nature of the alleged PAGA Claims asserted pre-litigation and resolved by this Settlement Agreement, describe in brief the procedural background, that the Parties mediated the PAGA Claim, resolved it, and that the Action is meant only to obtain Court approval of the Settlement Agreement. The only cause of action that may be alleged is for declaratory relief, seeking an order of the Court approving this Settlement Agreement as to the PAGA Claim. Archer covenants not to file any other cause of action or claim, and shall seek no other relief, including, but not limited to, damages, alleged attorneys' fees and costs, interest, statutory penalties, civil penalties, or any form of remuneration whatsoever. Prior to filing the Complaint in the Action, Archer shall first share that document with OneLegacy and obtain its approval for filing, which shall not be unreasonably withheld. Archer shall have no right to conduct any discovery in the Action.

(b) The Parties shall cooperate in obtaining an order from the Court approving this Settlement Agreement and dismissal of the PAGA Claim based thereon, as described herein, but it shall be Archer's primary responsibility at all times to obtain this relief, including Archer's responsibility to create first drafts of any necessary court filings. The Parties' further agree to cooperate in the drafting and/or filing of any further documents and/or filings reasonably necessary to be prepared and/or filed, and to take all steps that may be requested by the Court in order to obtain approval and implementation of this Settlement Agreement, and the payments described in Section 3(a) above.

(c) The Parties shall seek to obtain Court approval of this Settlement Agreement by way of an unopposed motion to be filed by Archer's Counsel. Archer's Counsel shall provide a draft of all documents to be submitted in connection with the motion to approve this Settlement Agreement to Defense counsel, Jason Ross and Ahllam Berri, for review and approval prior to filing, which approval shall not be unreasonably withheld.

(d) The Parties expressly acknowledge that the Court's approval of the Settlement Agreement is a condition precedent to any payments described in this Settlement Agreement being made. Should the Court initially decline to approve the Settlement Agreement as-is, the Parties shall work cooperatively to remedy the Court's recited deficiencies. Should the Court initially decline to approve this Settlement Agreement for alleged want of sufficient consideration to the LWDA and/or the Aggrieved Employees, Archer understands and agrees that he shall allocate more towards the LWDA Payment and Employees' Portion exclusively from the Attorneys' Fees and Costs and/or the Enhancement Fee described in Section 3(a)(1)-(2) until Court

approval is obtained. Under no circumstances shall OneLegacy pay more than the amount specified in Section 3(a). Despite the Parties' efforts as delineated herein, should the Court ultimately not enter an order approving this Settlement Agreement, OneLegacy shall have the sole option, in its discretion, to make the Settlement Agreement null and void, and so to the Graham Archer v. OneLegacy Settlement and General Release Agreement dated February 18, 2021.

(e) Subject to Section 3 above, OneLegacy shall remit to the PAGA Settlement Administrator the sums described more fully in Section 3(a) above, after all of the following has occurred: (i) the Settlement Agreement is fully executed by all Parties and their counsel; (ii) the Action delineated below is filed, consistent with the terms of this Settlement Agreement, and (iii) the Court has entered an order approving the Settlement Agreement.

(f) Upon complete distribution of the Total Settlement Amount by the PAGA Settlement Administrator in accordance with this Settlement Agreement, the Settlement Administrator shall notify the parties of distribution of the entire Total Settlement Amount, and within ten (10) business days of such notification, Archer shall seek dismissal of the PAGA Claim in its entirety with prejudice.

6. Payment of PAGA Settlement Sum / Notice.

(a) Subject to and following Court approval of this Settlement Agreement, payment of the sums described in Section 3(a) above shall be made by OneLegacy by transmitting the required sums to a qualified settlement account established by the PAGA Settlement Administrator for administration of this Settlement, within fourteen (14) calendar days of entry of the Court's order granting approval of this Settlement Agreement. If the date by which payment by OneLegacy is due falls on a Saturday, Sunday or legal holiday in the State of California, then the due date shall be extended to the next following day which is not a Saturday, Sunday or legal holiday in the State of California.

(b) Each Aggrieved Employee will be entitled to a *pro rata* share of 25% of the Net Settlement Amount (i.e., the Employees' Portion) based upon the number of pay periods they each worked between November 11, 2019 through the date of entry of an order approving the Settlement Agreement ("Compensable Pay Periods"), based on OneLegacy's payroll records. Specifically, to calculate each PAGA Settlement Member's share of the Employees' Portion ("Individual Settlement Share"), the PAGA Settlement Administrator shall: (1) divide the Employees' Portion by the total aggregate number of Compensable Pay Periods, and then (ii) multiply this amount by each Aggrieved Employee's number of Compensable Pay Periods worked to arrive at each Aggrieved Employee's Individual Settlement Share.

(1) One Hundred Percent (100%) of all Individual Settlement Shares are to be considered civil penalties and shall not be subject to local, state or federal payroll tax withholdings. All Aggrieved Employees who cash, deposit, or otherwise negotiate their Individual Settlement Share checks shall receive an IRS Form 1099 issued by the PAGA Settlement Administrator for their Individual Settlement Share, as required by the IRS.

(c) The Parties agree to retain CPT Group to serve as the PAGA Settlement Administrator;

(d) The PAGA Settlement Administrator shall distribute each Individual Settlement Share by way of check, along with a cover letter agreed to by the Parties, in the following manner:

(1) No later than fourteen (14) calendar days after entry of the Court's order granting approval of the Settlement, OneLegacy shall provide the PAGA Settlement Administrator with a list of all Aggrieved Employees (the "Aggrieved Employees List"), containing the following information for each Aggrieved Employee: (i) first and last name; (ii) last known address; (iii) last known telephone number; (iv) social security number; (v) Compensable Pay Periods.

(2) The PAGA Settlement Administrator shall conduct one (1) National Change of Address ("NCOA") search for all individuals identified on the Aggrieved Employee List.

(3) No later than fourteen (14) calendar days after the PAGA Settlement Administrator's receipt of the Total Settlement Amount and Aggrieved Employee List, the PAGA Settlement Administrator shall mail the agreed-upon Cover Letter and Individual Settlement Share checks (together, the "PAGA Settlement Package") to all Aggrieved Employees by first-class United States mail. For each PAGA Settlement Package that is returned undeliverable, the PAGA Settlement Administrator shall promptly attempt to locate an alternate, updated address for the Aggrieved Employee at issue, by using an address refresher database and shall attempt one (1) re-mailing of the PAGA Settlement Package.

(4) The Individual Settlement Share checks issued to Aggrieved Employees shall remain valid for one hundred twenty (120) calendar days, and thereafter, shall be cancelled. Funds associated with cancelled checks shall be transmitted to OneLegacy Foundation (www.onelegacyfoundation.org) or such other organ, eye, and tissue recovery organization as approved by the Court.

(e) Also, no later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall transmit the LWDA Payment to the LWDA.

7. Release of Claims by Archer, Aggrieved Employees, and the State of California.

(a) Upon the Effective Date, and except as to the rights and obligations created by this Settlement Agreement, Archer and Aggrieved Employees, and each of them, individually and on behalf of each of their heirs, executors, administrators, representatives, attorneys, successors and assigns, and the State of California, on behalf of itself and its administrators, representatives, agencies, departments, and assigns, will be deemed to have knowingly and voluntarily released and forever discharged OneLegacy, including OneLegacy's parent corporation, affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, and their current and former employees, attorneys, officers, directors and agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and the trustees, administrators, fiduciaries and insurers of such plans and programs (collectively, the "Released Parties"), to the fullest extent permitted by law, of and from the PAGA Claim and from any and all claims asserted or unasserted, which could have been asserted, arising during the period from November 11, 2019 through the date of entry of judgment, for civil penalties under California Labor Code section 2698,

et seq. ("PAGA") as well as any interest, fees, and costs available under PAGA, based on or reasonably arising out of the facts and circumstances contained in the Complaint or in the PAGA Notice, and all claims that could have been alleged based on the factual allegations contained collectively therein, including, but not limited to, claims for failure to pay overtime and/or meal/rest period premium wages by failing to include all remuneration in calculating the regular rate of pay; failing to pay premium wages to non-exempt employees to compensate them for workdays OneLegacy failed to provide compliant meal periods; failing to pay premium wages to non-exempt employees to compensate them for workdays OneLegacy failed to provide compliant rest breaks; failure to provide the opportunity to take compliant meal and/or rest periods; alleged misclassification; failure to pay minimum wage(s); failure to pay overtime; failure to timely pay wages during employment, failure to timely pay wages upon termination, failure to provide compliant wage statements, and failure to maintain requisite payroll records; and for violations of Labor Code sections 201, 202, 203, 204, 221, 226, 226.3, 510, 512, 515, 1174, 1194, 1198, and applicable Industrial Welfare Commission Wage Orders in conformity with Labor Code section 2699.3.

(b) Upon the Effective Date, and except as to the rights and obligations created by this Settlement Agreement, Archer, individually and on behalf of his heirs, executors, administrators, representatives, attorneys, successors and assigns, will be deemed to have knowingly and voluntarily released and forever discharged Released Parties, to the full extent permitted by law, from any and all claims of every nature whatsoever, known or unknown, suspected or unsuspected, arising out of or related to OneLegacy's employment of Archer, which Archer has or may have as of the Effective Date. This broader release includes, but is not limited to, all claims arising directly or indirectly from Archer's employment with OneLegacy and the termination of that employment, including without limitation claims arising under federal, state or local laws and claims for unpaid wages, penalties, liquidated damages, breach of contract, breach of the implied covenant of good faith and fair dealing, infliction of emotional distress, wrongful or retaliatory discharge, harassment, discrimination, defamation, impairment of economic opportunity, and violations of public policy, the Fair Labor Standards Act, the California Labor Code, the California Fair Employment and Housing Act, the California Business and Professions Code, the California Constitution, the Civil Rights Act of 1866, Title VII of the Civil Rights Act of 1964, and the Americans with Disabilities Act of 1990.

8. **No Transfer/Assignment of Claims.** Archer warrants and represents that Archer has not assigned or transferred or purported to assign or transfer to any person or entity all or any part of or any interest in any claim released under this Settlement Agreement. Archer is solely responsible for the satisfaction of any assignment or lien to any lien holder and will indemnify and hold the Released Parties harmless against any liens, damages, penalties, fines, fees, assessments, taxes or attorneys' fees that may be imposed against or incurred by any of the Released Parties as a result of the PAGA Claim of any lien holder or any lien claimant or any court in relation to any interest which any third party may have in any claim which Archer is releasing under this Settlement Agreement or any interest in any of the proceeds paid to Archer or Archer's Counsel under this Settlement Agreement.

9. **Liens and Attorneys' Fees/Indemnification.**

Archer solely is responsible for any liens made in connection with any services performed on Archer's behalf by any attorney, consultants, or expert witnesses. Each Party solely is responsible for any fees and costs he, she or it has incurred including, but not limited to, fees for

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attorneys, consultants and expert witnesses. Archer acknowledges that none of the Released Parties are responsible for the payment of any fees incurred on behalf of Archer in connection with the prosecution of the PAGA Claim, except to the extent the Settlement Agreement provides for payment of Attorneys' Fees and Costs.

10. **Governing Law and Interpretation.**

(a) This Settlement Agreement shall be governed and conformed in accordance with the laws of the State of California provided, however, that parol evidence shall not be admissible to alter, vary or supplement the term of this Settlement Agreement. Should any provision of this Settlement Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable such provision immediately shall become null and void, leaving the remainder of this Settlement Agreement in full force and effect.

(b) In the event of a breach of any provision of this Settlement Agreement, any Party reserves the right to institute an action specifically to enforce any term or terms of this Settlement Agreement or seek damages for breach. In an action to enforce any term or terms of this Settlement Agreement or to seek damages for breach of this Settlement Agreement, the prevailing Party in that action shall be entitled to recover reasonable attorney's fees and costs from the non-prevailing Party.

11. **Amendment.** This Settlement Agreement may not be modified, altered or changed except in writing and signed by both Parties wherein specific reference is made to this Settlement Agreement, subject to approval by the Court.

12. **Miscellaneous.**

(a) This Settlement Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which, taken together shall constitute the same instrument. A signature made on a faxed or electronically mailed copy of the Settlement Agreement or a signature transmitted by facsimile or electronic mail shall have the same effect as the original signature.

(b) The section headings used in this Settlement Agreement are intended solely for convenience of reference and shall not in any manner amplify, limit, modify or otherwise be used in the interpretation of any of the provisions hereof.

(c) This Settlement Agreement was the result of negotiations between the Parties and their respective counsel. In the event of vagueness, ambiguity or uncertainty, this Settlement Agreement shall not be construed against the Party preparing it, but shall be construed as if both Parties prepared it jointly.

(d) If Archer or OneLegacy fail to enforce this Settlement Agreement or to insist on performance of any term, that failure does not mean a waiver of that term or of the Settlement Agreement. The Settlement Agreement remains in full force and effect anyway.

HAVING ELECTED TO EXECUTE THIS SETTLEMENT AGREEMENT, TO FULFILL THE PROMISES AND TO RECEIVE THE CONSIDERATION SET FORTH IN SECTION 3(a) ABOVE, ARCHER AND DEFENDANT, FREELY AND KNOWINGLY,

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AND AFTER DUE CONSIDERATION, ENTER INTO THIS SETTLEMENT AGREEMENT.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Settlement Agreement as of the date set forth below:

5/26/2021
Date: May ____, 2021

DocuSigned by:

Graham Archer

GRAHAM ARCHER

Individually and On Behalf of the State of California and Aggrieved Employees

ONE LEGACY

June 2, 2021

Date: May ____, 2021

By: *Thomas D. Mone*

Approved as to form and content.

BUCHSBAUM HAAG, LLP

Date: May 26, 2021

By:

Laurel Haag
LAUREL HAAG

Attorneys for GRAHAM ARCHER

WOOD, SMITH, HENNING & BERMAN,
LLP

June 3, 2021
Date: May ____, 2021

By:

Jason Ross
JASON ROSS

AHLLAM BERRI

Attorneys for Defendants